United Nations A/62/807

General Assembly

Distr.: General
18 April 2008

Original: English

Sixty-second session
Agenda items 136, 140 and 151

Report on the activities of the Office of Internal Oversight Services

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Financing of the United Nations Interim Administration Mission in Kosovo

Report of the Office of Internal Oversight Services on the comprehensive audit of the United Nations Interim Administration Mission in Kosovo mandate implementation

Summary

At the request of the Special Representative of the Secretary-General for the United Nations Interim Administration Mission in Kosovo (UNMIK), the Office of Internal Oversight Services (OIOS) conducted a comprehensive audit of the implementation of the UNMIK mandates for police and justice, civilian administration, and economic reconstruction and development. The audit was conducted from June to August 2007.

The present report consolidates the three audit reports of OIOS on respective segments of the audit,[1] the main objectives of which were to assess the performance of UNMIK in implementing Security Council resolution 1244 (1999), focusing on its mandates with respect to: (a) establishing the Kosovo Police Service and an independent and multi-ethnic judiciary, and reforming the correctional system in Kosovo; (b) performing basic civil administrative functions, promoting the establishment of self-government in Kosovo, and promoting human rights and ensuring the safe return of refugees and displaced persons; and (c) developing the legal, institutional and policy framework for Kosovo's economic reconstruction and development.

08-31055 (E) 090508

The audit identified a number of failures and deficiencies in implementing the mandates. In particular, OIOS had fundamental concerns regarding the management of the transfer of responsibilities to the central government ministries and local municipalities. OIOS also noted significant deficiencies in the governance mechanisms and internal control processes at the Kosovo Trust Agency (KTA), which has major responsibilities for developing Kosovo's economy. Furthermore, the continued weaknesses and backlog of court cases in the judiciary system are of great concern. These failures and deficiencies should be urgently addressed in order to ensure the successful conclusion of UNMIK operations. OIOS plans to conduct further reviews of the implementation of the UNMIK mandate.

The Department of Peacekeeping Operations did not provide OIOS with its comments on the report. The Department only transmitted a letter dated 7 April 2008 from the Special Representative of the Secretary-General for UNMIK addressed to the Secretary-General, wherein UMMIK indicated that it had declined to provide line-by-line comments on the OIOS report, asserting that there were substantive and procedural flaws in the OIOS comprehensive audit of UNMIK. OIOS does not agree with this assessment and believes that the audit was comprehensive and focused on high-risk areas which could adversely affect the achievement of the objectives of UNMIK.

Police and justice

UNMIK had transferred more than 80 per cent of the competencies for law enforcement to the Kosovo Police Service (KPS). The Mission had also formally established judicial systems, including a correctional system, and these institutions have been "Kosovorized" to a large extent. However, there was a lack of effective leadership and managerial skills which had limited the ability of UNMIK to accomplish the mandated goals and objectives in an efficient and effective manner. Furthermore, the continued weaknesses in the judiciary system were of particular concern. The staff strengths of KPS and the Kosovo Correctional Service were built up on an ad hoc basis. The UNMIK Regulation was not promptly amended to provide clear goals for the required multi-ethnic composition of the judiciary in conformity with the Kosovo Constitutional Framework. Moreover, the total number of pending court cases, which stood at 160,238 as of March 2007, was alarming in its magnitude and implications.

Civil administration

UNMIK did not establish minimum criteria for assessing the preparedness of central government ministries and local government municipalities before the transfer of civil administration competencies, and failed to put effective mechanisms in place to monitor and determine whether the ministries and municipalities had adequately assumed the competencies transferred from UNMIK. As a result, OIOS identified fundamental concerns regarding UNMIK support and monitoring of the management of central government ministries and operation of local government municipalities.

Reconstruction and development

Significant deficiencies were identified in the governance mechanisms and internal control processes at KTA, which has major responsibilities for developing Kosovo's economy. OIOS is of the opinion that UNMIK and the KTA Board of Directors (the KTA Board) operated the Agency in a way that did not show due regard for adherence to the KTA Regulation, corporate governance principles, financial fiduciary responsibilities, and public accountability requirements. For example, the KTA Board contravened the KTA Regulation and the Agency's corporate governance principles and guidelines when it approved the appointment of politically active members to the Board of Directors of the Kosovo Energy Corporation J.S.C. This has resulted in a weak corporate governance framework that represents a significant risk to the effective performance and financial sustainability of the Agency and the enterprises under its administration.

[1] Comprehensive Interim Audit of UNMIK Mandate Implementation — Police and Justice; Assignment No. AP2007/650/13, 28 February 2008; Comprehensive Interim Audit of UNMIK Mandate Implementation — Civil Administration; Assignment No. AP2007/650/14, 28 February 2008; Comprehensive Interim Audit of UNMIK Mandate Implementation — Pillar IV; Assignment No. AP2007/650/15, 10 March 2008.

Contents

		Paragraphs	Page
I.	Introduction	1–8	5
II.	Implementation of the mandates on police and justice (Pillar I)	9–34	7
	A. Development of the Kosovo Police Service	10–17	7
	B. Establishment of an independent judiciary system	18–31	8
	C. Establishment and reform of the correctional system	32–34	11
III.	Implementation of the mandates on civil administration (Pillar II)	35–62	12
	A. Establishment of Provisional Institutions of Self-Government central government and transfer of responsibilities	38–42	12
	B. Establishment of Provisional Institutions of Self-Government local governments and transfer of responsibilities	43–51	15
	C. Performance of Provisional Institutions of Self-Government local governments	52–56	17
	D. Human rights and returns of refugees and displaced persons	57–62	18
IV.	Implementation of the mandates on economic reconstruction and development (Pillar IV)	63–82	20
	A. Kosovo Trust Agency	64–70	20
	B. Administration of publicly owned enterprises and socially owned enterprises	71–78	21
	C. Economic regulatory bodies	79–82	24
V.	Recommendation	83–85	24
Annex			
	List of the most critically important of the recommendations issued by the Office of Internal Oversight Services to the United Nations Interim Administration Mission in Kosovo Administration		26

I. Introduction

1. At the request of the Special Representative of the Secretary-General for the United Nations Interim Administration Mission in Kosovo (UNMIK), the Office of Internal Oversight Services (OIOS) conducted a comprehensive audit of the implementation of the UNMIK mandate, from June to August 2007. The present report summarizes the audit results for the UNMIK pillars responsible for police and justice, civil administration, and economic reconstruction and development activities. The comments made by UNMIK, the Department of Peacekeeping Operations and the Executive Office of the Secretary-General have been included in the report as appropriate and are shown in italics.

2. UNMIK was established by the Security Council in its resolution 1244 (1999). The Mission is mandated to help the Council to achieve its overall objective of promoting the establishment of substantial autonomy and self-government in Kosovo, pending a final settlement. The Mission is headed by the Special Representative of the Secretary-General, who is the highest international civilian official in Kosovo with the civilian executive powers vested in him by the resolution of the Council and pursuant to the Constitutional Framework for Provisional Self-Government in Kosovo of 2001. A Principal Deputy Special Representative assists the Special Representative in directing and managing the Mission, and to ensure a coordinated approach by the Mission's pillars which include: I, police and justice, and II, civil administration — financed by the United Nations; III, democratization and institution-building — financed by the Organization for Security and Cooperation in Europe; and IV, economic reconstruction and development — financed by the European Union. Although UNMIK has gradually turned over competencies for administration to the provisional institutions, it retains overall administrative authority and responsibility for the province. Thus, the ultimate responsibility rests with the Special Representative for ensuring that the Mission's mandates are successfully carried out.

3. Referring to Security Council resolution 1244 (1999), the OSCE Permanent Council decided that the OSCE Mission in Kosovo would, within the overall framework of UNMIK, "take the lead role in matters relating to institution- and democracy-building and human rights" and the rule of law.[2] On 1 July 1999, the OSCE Mission in Kosovo was established by the OSCE Permanent Council and it formed a distinct component of UNMIK responsible for institution- and capacity-building. However, OIOS was not able to fully review the institution- and capacity-building activities because OSCE did not provide OIOS with access to all relevant internal documents and reports. Therefore, OIOS was not in a position to draw any conclusions or make any recommendations on operational aspects of OSCE in relation to institution- and capacity-building, including internal oversight by OSCE.

4. A Deputy Special Representative of the Secretary-General, under the direct authority of the Special Representative, heads the UNMIK Pillar IV, which has the overall economic mandate to develop a legal, institutional and policy framework for the economic reconstruction, recovery and development of Kosovo. The audit of UNMIK Pillar IV focused on key areas of risk that emerged from the OIOS risk assessment. Those areas included the governance, risk management and internal

[2] Organization for Security and Cooperation in Europe Permanent Council, Decision No. 305, 1 July 1999 (PC.DEC/305).

control systems at the Kosovo Trust Agency and the publicly owned and socially owned enterprises it is responsible for overseeing; the governance and oversight controls in the economic regulators, namely, the UNMIK Customs Service and the Central Banking Authority of Kosovo; and the administrative functions of UNMIK Pillar IV.

5. *The UNMIK Administration commented that the audit did not provide the rationale and context, or the evolution of the Mission's mandate over the years, and therefore did not constitute the correct basis for OIOS to make recommendations.* OIOS points out that it is not the purpose of an audit to describe the rationale, context or evolution of the audited entity's mandate, although those elements are considered to draw audit conclusions, to the appropriate extent. The audit of UNMIK was conducted comprehensively, focusing on the areas presenting significant risks to the achievement of the Mission's objectives. OIOS presented its risk-based audit approach to the UNMIK Administration at the commencement of the audit. The audit's preliminary conclusions were discussed with the UNMIK Administration at an exit conference held on 9 August 2007 and communicated in OIOS draft reports on the implementation of the mandates for police and justice, civil administration, and economic reconstruction and development. Management's comments were taken into consideration in preparing the present report.

6. OIOS made a total of 69 recommendations to address the deficiencies identified in the audit reports issued to the UNMIK Administration, the most critically important of those are in the annex to the present report. *The UNMIK Administration has not provided its detailed comments in response to each of the recommendations. The UNMIK Administration commented that the recommendations did not take into account the current political reality and the current phase of the Mission. Many recommendations could therefore be considered as a basis for lessons learned for new missions rather than something which could be effectively implemented at this stage of UNMIK. The Department of Peacekeeping Operations did not provide OIOS with its comments on the report. The Department only transmitted a letter dated 7 April 2008 from the Special Representative of the Secretary-General for UNMIK addressed to the Secretary-General, wherein UNMIK (a) indicated that it had declined to provide line-by-line comments on the OIOS report, asserting that there were substantive and procedural flaws in the OIOS comprehensive audit of UNMIK; and (b) requested the Secretary-General that the views of UNMIK expressed in the letter be attached to the present report.*

7. OIOS does not agree with the above assessment. The recommendations address the deficiencies and main risks that require prompt action by UNMIK, and the UNMIK Administration has the responsibility for their timely implementation. Furthermore, the Special Representative's letter of 7 April 2008 to the Secretary-General does not contain any substantive comments on the findings and recommendations made in the report.

8. OIOS also recommended that the Secretary-General should bring the audit results and recommendations to the attention of the Security Council, which established UNMIK by its resolution 1244 (1999), for its information. *The Executive Office of the Secretary-General responded to this recommendation, stating that it was not the responsibility of the Secretary-General to refer such a report to the Security Council. This does not however, preclude the Secretary-General from*

referring to the OIOS report in his own report on UNMIK to the Security Council, to be submitted around June 2008. OIOS wishes to clarify that it did not request the Secretary-General to refer the report to the Security Council, but rather to bring the audit results and recommendations to the attention of the Security Council. In the opinion of OIOS, it is appropriate that the significant issues pertaining to the implementation of the Mission's mandate be brought to the attention of the Security Council for its information.

II. Implementation of the mandates on police and justice (Pillar I)

9. As indicated in the report of the Secretary-General of 12 July 1999 (S/1999/779), two main goals of the Mission's strategy for law and order in Kosovo were the provision of interim law enforcement services and the rapid development of a professional and impartial local police. There was also an urgent need to build a genuine rule of law in Kosovo through the immediate re-establishment of an independent, impartial and multi-ethnic judiciary. The Mission's objectives in regard to that sector also included the re-establishment and reform of the correctional system in Kosovo.

A. Development of the Kosovo Police Service

10. The main activities throughout the UNMIK mandate in developing the Kosovo Police Service (KPS) included: (a) the recruitment and limited training of 7,200 KPS officers; (b) pursuit of the goal of creating a multi-ethnic KPS; and (c) the transition of authority from the UNMIK Police to KPS. UNMIK started building up KPS in September 1999, and the "Kosovarization" of the Service started in 2003. Since then, the UNMIK Police has been gradually transferring the responsibility for law enforcement to KPS. As of June 2007, overall the transition percentages in terms of units and personnel were stated to be 83 and 86 per cent, respectively.

11. OIOS found that there was no clear documented basis for establishing the optimum staffing level of KPS. The UNMIK Police officials interviewed during the audit confirmed that there were no historical documents to support the current strength figures. OIOS research revealed that the ratio of police to population had been widely adopted by various countries to determine the optimal number of police personnel. The standard ratio of police to population mentioned in research publications on nation-building and United Nations peace operations were 1:500 and 1:450, respectively. Based on those measures, the strength of KPS should be no greater than 4,500 officers. Therefore, the current strength of KPS at 7,200 might not be justified.

12. *The UNMIK Administration stated that steps had already been taken to reduce the ratio of police to population, which included a freeze on recruitment allowing an annual attrition rate of 250 to 300 in order to reduce the staff. Also, an analysis of policing needs was being undertaken for the first time in order to produce a formula for personnel strength to provide an accurate figure for future establishment.*

Minority and gender representation

13. A Law on Gender Equality in Kosovo was adopted by the Kosovo Assembly and promulgated by the Special Representative as UNMIK Regulation No. 2004/18 of 7 June 2004. Sections 3.1 and 3.2 of the Law provided that equal gender participation be achieved in cases where the participation of a particular gender in the institutions, bodies or at the level of authority is 40 per cent.

14. With particular regard to KPS, UNMIK Regulation No. 2005/54 of 20 December 2005 on the Framework and Guiding Principles of the Kosovo Police Service required in section 4.4 that "the Kosovo Police Service shall recruit a work force of mixed gender and ethnicity, the composition of which proportionally reflects the multi-ethnic and gender balance in Kosovo". Also, the Minorities Decision No. 5/154 of the Government of Kosovo, issued in June 2005, called for 16.6 per cent representation of minorities in the Kosovo central government.

15. The OIOS review of the composition of KPS revealed that UNMIK generally achieved the goal of creating a multi-ethnic KPS. However, OIOS found that there was a long way to go to attain the desired gender balance in KPS. The percentage of women in KPS, instead of increasing, declined steadily from 16.2 per cent in June 2002 to 13.6 per cent in June 2007.

Witness protection system

16. The objective of a witness protection programme is to protect vulnerable witnesses prior to and subsequent to their testimony at trial by transferring them to a secret secure site. The absence of an adequate witness protection system is also of major concern in Kosovo. OIOS was informed by the Department of Justice that a large number of criminal cases (more than 1,000) relating to the March 2004 riots would not have a chance of being properly investigated and prosecuted, as witnesses have not come forward to identify perpetrators and cooperate in investigations and trials owing to fears of a lack of protection.

17. In his technical assessment of the progress in implementing the standards prepared in April 2006 (S/2006/361), the Special Representative conceded that mechanisms were still not in place for adequate witness protection. In his subsequent assessment made in November 2006 (S/2006/906), the Special Representative had stated that further efforts were needed to protect witnesses from intimidation and that legislation on witness protection needed to be finalized. Furthermore, a review by OSCE in 2006 of the criminal justice system highlighted gaps in the witness protection legislation and expressed concern that the failure to effectively protect witnesses prevented the effective prosecution of alleged criminals, impeded the establishment of rule of law in Kosovo, and eroded public confidence in the justice system.

B. Establishment of an independent judiciary system

18. In June 1999, Kosovo's judicial system emerged from the conflict in tatters, and there was no functioning court system as many of the non-Albanian judges and prosecutors who had worked in Kosovo during the previous 10 years fled owing to the fear of reprisals. Therefore, establishing an independent multi-ethnic judiciary system was stated to be one of the most urgent and challenging tasks facing UNMIK

upon its arrival. UNMIK succeeded in formally establishing the basic requirements of the judiciary system in Kosovo, which included the amendment of existing regulations as a basis for achieving the goal of a multi-ethnic judiciary system, promulgation of new regulations to reform the judiciary system, and the establishment of a Victims Advocacy and Assistance Unit to protect and assist victims. UNMIK also established the Kosovo Judicial Council and the Kosovo Judicial Institute.

19. The audit identified various failures and deficiencies in the Mission's management of the judiciary programme. The rapid turnover in the leadership of the Department of Justice and a lack of effective leadership and managerial skills limited the Department's ability to accomplish the mandated goals and objectives. There were 10 heads or acting heads of the Department over the period 1999 to 2007, which OIOS considered as abnormally high. There were indications that two of the heads were found to be unequal to the task.

Progress towards a multi-ethnic judiciary

20. Pursuant to article 9.4.7 of the Constitutional Framework for Provisional Self-Government in Kosovo promulgated on 15 May 2001, any Regulation governing the selection of judges in force on or after that date should have been amended to clearly provide for the representation of minority communities on the basis of the ethnic composition of the population. That, however, was not done until nearly five years later, when UNMIK Regulation No. 2006/25 of 27 April 2006 on a Regulatory Framework for the Justice System in Kosovo was promulgated.

21. UNMIK Regulation No. 2006/25 stressed the need for equitable representation of all communities in Kosovo and recognized the need for remedying the under-representation of Kosovo communities among judges and prosecutors by taking specific steps, including reservation of posts and waiver of some of the requirements for selection. It envisaged a minimum representation of 15 per cent of the non-Kosovo-Albanian communities and 8 per cent of the Kosovo-Serb community. In the opinion of OIOS, the Regulation had a positive effect in that 5 out of 12 judges recruited after the promulgation of that Regulation through 31 May 2007 were from the non-Kosovo-Albanian communities, and 2 belonged to the Kosovo-Serb community. It was further understood that one of the two prosecutors recruited during this time belonged to the Kosovo-Serb community.

22. The established goal of a multi-ethnic judiciary has yet to be achieved. As of June 2007, 10.6 per cent of the 307 judges were non-Kosovo-Albanians, and 4.6 per cent were from the Kosovo-Serb community; 9.1 per cent of the 88 prosecutors were non-Kosovo-Albanians, and 3.4 per cent were Kosovo-Serbs.

Investigation of the March 2004 riots

23. As a result of widespread riots in March 2004, 19 people were killed and more than 900 injured. In addition, over 800 Serb houses and 35 Orthodox churches and monasteries were burned or severely damaged, and over 4,000 Serbs, Ashkalis and Romas were rendered homeless.

24. In his statement of 18 March 2004 (S/PRST/2004/5), the then President of the Security Council stressed on behalf of the Council that "those responsible must be brought to justice". In this regard, the Special Envoy of the Secretary-General had

stated in his report of 2004 (see S/2004/932, annex I) that after the March violence, UNMIK affirmed its commitment to bring to justice those who were responsible. However, in his report of 1 September 2006 to the Security Council (S/2006/707), the Secretary-General indicated that no significant progress had been made in investigating and prosecuting cases related to the violence of March 2004.

25. The technical assessment of the Special Representative prepared in June 2007 (S/2007/395) indicated that as of 2 April 2007, the Police Task Force established in April 2006 to investigate the March 2004 riot cases had investigated 1,526 cases, of which 754 were under review, 177 remained open, 315 were closed, 120 were under active investigation, and 160 were being investigated by KPS. OIOS is of the opinion that UNMIK has not adequately monitored the progress of those cases. For example, the Department of Justice did not maintain a proper and comprehensive database of the cases relating to the March 2004 riots. When asked to provide a breakdown of the total number of cases that were awaiting investigation, prosecution and trial, as well as the number of cases where all of the three processes were completed, the Department responded that it could give full information at this stage only with respect to cases handled by international prosecutors.

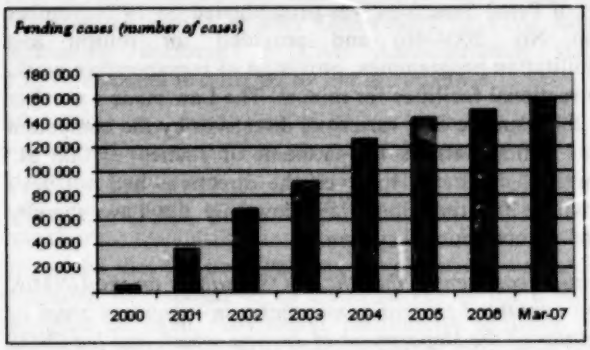
26. According to the Department of Justice, it had reviewed five cases relating to the March 2004 riots forwarded to UNMIK by the Serbian Ministry of Interior. *The UNMIK Administration stated that more than 300 cases had been reviewed by the Department, rather than 5 cases, as indicated in the report.* OIOS would like to point out that the Department provided the information on the number of cases contained in the draft audit report. Furthermore, the UNMIK Administration did not question the finding when OIOS presented its conclusions during the exit conference held on 9 August 2007. In the absence of documentation to support the contention of UNMIK that 300 cases were reviewed by the Department, OIOS maintains its conclusion based on the initial information provided by the Department.

Backlog of court cases

27. Article 9.4.3 of the Constitutional Framework for Provisional Self-Government guarantees that, "Each person shall be entitled to have all issues relating to his rights and obligations and to have any criminal charges laid against him decided within a reasonable time by an independent and impartial court". In this regard, in his report to the Security Council of 14 April 2003 (S/2003/421), the Secretary-General indicated that the ratio of Kosovo local judges and prosecutors per 100,000 inhabitants was close to European standards. However, he added that despite the high proportion of judges, prosecutors and courts relative to the population, there remained a significant backlog of cases pending in the courts.

28. As shown in figure I below, the total number of pending court cases (civil and criminal) has steadily grown from less than 20,000 in 2000 to 160,238 as of March 2007. No ageing analysis of pending cases was available, as the Department of Justice has not maintained those data.

Figure I
Increase in the number of pending court cases, 2000-March 2007



29. The Ombudsperson Institution in Kosovo, in its Sixth Annual Report dated 11 July 2006, has highlighted the fact that judges were not assigned to courts according to the existing needs. The report further stated that the general low quality of work in the courts and a lack of professionalism and motivation, especially on the side of the first-instance courts, increased the already overwhelming backlog of cases pending in appeal courts. In its first review of the civil justice system in Kosovo which was reported in June 2006, OSCE also concluded that the poor management of cases was one of the key reasons for the existing backlog of civil cases.

30. UNMIK described several initiatives aimed at reducing the backlog of court cases, such as the increase in the number of executive clerks, and the automation project in all courts and prosecutors' offices in Kosovo. The Kosovo Judicial Council adopted its Strategic Plan for the next five years, which also includes the reduction of pending cases by using mediation, inventorying old cases, using joint claims processing where appropriate, training staff and other non-traditional measures.

31. In order to avoid any further increase in the backlog of pending court cases, UNMIK needs to expedite the enactment of legislation on notaries and court-appointed mediation, and ensure that the Kosovo Judicial Council takes prompt and effective remedial steps to maintain a reliable database on case load and ageing, developing and implementing a needs-based judicial training programme, and implementing and monitoring time standards for case processing.

C. Re-establishment and reform of the correctional system

32. According to the first report of the Secretary-General to the Security Council on UNMIK of 12 July 1999 (S/1999/779), the Mission's mandate included re-establishment and reform of the correctional system in Kosovo "in a legal and operational framework that is consistent with international prison standards". Pursuant to that mandate, the Mission established the Kosovo Correctional Service (KCS) in 1999. As of June 2007, the total strength of KCS was stated to be 1,573 against the ceiling of 1,610. The number of detainees/prisoners was 1,210 as of June 2007. The present strength of KCS may not be justified. OIOS research

found that the average number of inmates per employee in KCS was 0.77 in 2007, while that ratio was 1.59 in a comparably situated Balkan country.

33. The Law on Execution of Penal Sanctions was promulgated on 19 November 2004 (UNMIK Regulation No. 2004/46) and provided for reform and modernization, such as rehabilitation programmes, provision of remunerative work, and provision of separate correctional facilities for minors. The Law made a number of mandatory provisions for the issuance of a variety of directives by the competent public entity in the field of judicial affairs (Department of Justice) within six months of the entry into force of the Law. However, the directives had not been issued by the Department within the time limit laid down by the Law, thereby delaying the modernization of the correctional system.

34. *The UNMIK Administration commented that the OIOS findings on the UNMIK police and justice component contained several inaccuracies in important areas of the functions and responsibilities of the Department of Justice, which had led OIOS to draw improper conclusions, specifically referring to the number of cases reviewed by the Department concerning investigations of the March 2004 riots.* However, as OIOS indicated in paragraph 26 above, UNMIK did not provide any documentation supporting its contention that there were inaccuracies in the OIOS report.

III. Implementation of the mandates on civil administration (Pillar II)

35. The Secretary-General stated in his report of 12 July 1999 (S/1999/779) that, "The public service structures of Kosovo are largely inoperative due to a combination of neglect, war damage and the departure of trained staff. The municipalities are functioning inadequately or not at all".

36. In 2002, the Secretary-General requested that UNMIK develop benchmarks against which progress can be measured in the critical areas of the rule of law, functioning democratic institutions, the economy, freedom of movement, the return of internally displaced persons and refugees and contributions to regional stability (see S/2002/436). In that regard, the eight Standards for Kosovo were developed, which are: (a) functioning democratic institutions; (b) rule of law; (c) freedom of movement; (d) sustainable returns and the rights of communities and their members; (e) economy; (f) property rights; (g) dialogue; and (h) the Kosovo Protection Corps.

37. At least 60 UNMIK staff were monitoring and reporting on the progress made in achieving the Standards for Kosovo. In his report of 29 June 2007 (S/2007/395), the Secretary-General stated "there has been concrete progress in many areas of standards, although results in some areas have been mixed and clearly much remains to be done".

A. Establishment of Provisional Institutions of Self-Government central government and transfer of responsibilities

38. In 2001, the Constitutional Framework for Provisional Self-Government, promulgated under UNMIK Regulation No. 2001/9 of 15 May 2001, transferred the responsibility for the central and local government, excluding the reserved powers

of the Special Representative of the Secretary-General, to the Provisional Institutions of Self-Government. Following the transfer of competencies to the Provisional Institutions, the UNMIK Civil Administration component was reconfigured into a smaller Department of Civil Administration, resulting in a continuing decrease in Civil Administration staffing, which went from 3,079 personnel in 2001/02 to 734 in 2005/06.

39. Once the ministries were established, UNMIK transferred administrative responsibilities to the Provisional Institutions of Self-Government ministries, under UNMIK Regulation No. 2001/9. However, UNMIK did not develop detailed minimum criteria to be met by the Provisional Institutions ministries, prior to transferring responsibilities from the Joint Interim Administrative Structure, which suggested that the transfers may have taken place before the ministries were fully prepared. In response to an OIOS survey of the UNMIK ministry representatives assigned in each Provisional Institutions Ministry to monitor and advise the ministries, five of the nine representatives stated that the transfer of responsibilities had taken place too soon. OIOS considers the absence of minimum criteria as the major cause of inadequate management of the Provisional Institutions ministries' operations, as discussed in the sections below.

Monitoring of the performance of Provisional Institutions of Self-Government ministries

40. OIOS is of the opinion that there was no effective mechanism in place to monitor and determine whether the Provisional Institutions ministries have adequately assumed the responsibilities transferred from UNMIK. OIOS identified fundamental concerns regarding continued non-compliance with the related laws and regulations for procurement and budget, and poor project management. The Office of the Auditor General of Kosovo reported widespread non-compliance with the relevant legal and regulatory requirements, in particular those specified in the current Law on Public Procurement (Law No. 2003/17) and cases of non-compliance with the Law on Public Financial Management and Accountability (Law No. 2003/2). UNMIK ministry representatives commented with respect to project management and service performance that there was a lack of experienced staff to implement the projects, many of which were approved on an ad hoc basis, and that no systematic oversight mechanisms for approved projects or lessons learned existed since there was no central coordination of projects.

41. Disclaimer audit opinions have been issued on the financial statements of the Kosovo Consolidated Budget for the years 1999 through 2006 by the Netherlands Court of Audit and the Office of the Auditor General of Kosovo. It showed that the internal control system and the financial management were so weak that the auditors could not form an opinion at all whether the financial statements were correct. The disclaimer opinion is an indicator of serious risk of fraud or mismanagement as this highlights the lack of an adequate financial management system. In this regard, the audit findings included, inter alia:

(a) Failure to collect all revenues due to the Kosovo Consolidated Budget;

(b) Numerous breaches of the Law on Public Procurement (Law No. 2003/17), which prevented the Kosovo Consolidated Budget from achieving the cost savings to be gained from an open and fair procurement process;

(c) The recording of expenditures against incorrect economic and departmental codes;

(d) Exposure to fraudulent activity regarding pension benefits by both the public and Provisional Institutions employees owing to internal control weaknesses in the pension benefit database and the lack of computerized interfaces.

42. The Human Rights Watch backgrounder report of June 2007[3] states that "nowhere is change needed more than in the area of accountability. After eight years of governing Kosovo, UNMIK faces what can only be described as a crisis of legitimacy. Some of that crisis reflects frustration among Kosovo's Albanian majority about the slow progress toward resolving status, and among Serbs and other minorities about UNMIK's failure to secure their rights." Moreover, according to the UNMIK Strategic Coordinator's assessment as of April 2007, the existing accountability mechanisms for the Provisional Institutions ministries and UNMIK were ineffective based on the weaknesses identified in the major elements of accountability. None of the eight Standards for Kosovo, established by the Special Representative of the Secretary-General and the Kosovo Government in 2001 as benchmarks for UNMIK and the progress of the Provisional Institutions, including functioning democratic institutions, the rule of law, human rights, sustainable returns, freedom of movement and property rights, was fully achieved. OIOS is of the opinion that the current accountability mechanisms for PISG ministries and UNMIK was ineffective owing to the weaknesses identified in each of those mechanisms, as follows:

(a) **The Office of the Auditor General under UNMIK Regulation No. 2000/7, amended by UNMIK Regulation No. 2002/18.** In a recent draft report concerning the activities of the Investigation Task Force in UNMIK, the Task Force stated that "the OAG has no power to compel clients to respond or enact change" and, the "enforcement is left to the discretion of the SRSG". The Department of Civil Administration commented that such enforcement is rarely applied. OIOS is concerned as this means that serious deficiencies, for example, in the audit of the 2005 financial statements of the Kosovo Consolidated Budget by the Office of the Auditor General have not been promptly corrected;

(b) **An internal audit function in each ministry under UNMIK Regulation No. 1999/16.** All UNMIK ministry representatives surveyed stated that their ministries had established an Internal Audit Unit and only two out of nine expressed reservations on the effectiveness of the Unit. However, OIOS noted that in the 2005 audit of the Kosovo Consolidated Budget financial statements, the Office of the Auditor General stated that it was not yet able to rely upon the activities of the internal audit units to provide assurance that internal controls were being properly applied. OIOS is aware that the Human Dynamics Consortium has been commissioned by the European Union to develop the capacity of the internal audit function in the Government of Kosovo. However, the process will not be completed until September 2008 at the earliest;

(c) **The Kosovo Anti-Corruption Agency under UNMIK Regulation No. 2005/26.** In the recent draft report of the Investigation Task Force in UNMIK, the Task Force stated that "the creation of the Kosovo Anti-Corruption Agency

[3] Human Rights Watch, "Better late than never: enhancing the accountability of international institutions in Kosovo", No. 2 (June 2007).

(KACA) was envisaged in the Kosovo anti-corruption strategy promulgated in March 2004, but it was only in July 2006 that the Agency was established by the Assembly of Kosovo pursuant to Law 2004/34". The draft report further noted that: "the anti-corruption strategy envisaged that KACA should have both a preventative and law enforcement mandate, with the ability to investigate and prosecute corruption offences independently". Furthermore, the Task Force stated that: "by the time the anti-corruption action plan was published in January 2006, the law enforcement component had disappeared and it had the mandate only to conduct administrative investigations. This confirmed Special Envoy Eide's concern that the necessary administrative and legislative actions to fight organized crime and to prevent corruption in provisional institutions had not been taken yet";

(d) **The Ombudsperson Institution in Kosovo under UNMIK Regulation No. 2000/38.** OIOS noted that the Fifth Annual Report of the Ombudsperson Institution in Kosovo of 11 July 2005 stated that "both the immunity of UNMIK and the partial lack of cooperation of UNMIK and PISG, coupled with weak supporting legislation, made it very difficult for the Ombudsperson to perform his work in an adequate and effective fashion".

B. Establishment of Provisional Institutions of Self-Government local governments and transfer of responsibilities

43. The Provisional Institutions of Self-Government local administration was established by UNMIK Regulation No. 2000/45 of 11 August 2000 on Self-Government of Municipalities, with UNMIK acting as the "Central Authority" under the responsibility of the Special Representative of the Secretary-General. Subsequently, the institutional basis of local administration/government was provided by the Constitutional Framework for Self-Government in Kosovo, as stipulated by UNMIK Regulation No. 2001/9, in chapter 1 — Basic Provisions — article 1.3: "Kosovo is composed of municipalities, which are the basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo". There are 30 municipalities in Kosovo. The reserved powers and responsibilities of the Special Representative are stipulated in article 8.1 (w) as the "responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles".

44. As was the case with Provisional Institutions ministries, the failure to establish criteria to ensure that the transfer of responsibilities was carried out at the most appropriate time in terms of the readiness of Provisional Institutions municipal administrations was also a major cause of serious deficiencies in the performance of Provisional Institutions municipal administrations. Furthermore, the lack of effective arrangements for monitoring and ensuring that the transferred responsibilities have been properly carried out contributed to the failure in performance.

Transfer of financial management responsibilities

45. By the end of 2002, the responsibility for financial administration was transferred from UNMIK and the Ministry of Finance and Economy to the municipalities based on their obtaining the certificates as set forth by section 46.2 of

chapter 9 of UNMIK Regulation No. 2000/45, which states, "responsibility for financial administration shall not be transferred to a municipality until the independent auditor has certified that adequate budgetary and financial management systems are in place and that the municipal civil service has the capacity and capability to implement effective financial procedures and controls. Until such time, the financial management procedures established by UNMIK shall remain in force".

46. However, OIOS was of the opinion that the quality of financial management and accounting was contrary to the certification based on the result of the audit of the financial statements of the municipalities. The audit opinions issued since 2001 on financial statements of municipalities are summarized in figure II below.

Figure II
Municipality financial statement audit opinions, 2001-2005

Audit opinions	*2001*	*2002*	*2003*	*2004*	*2005*	*Total*
Fair	19	2	0	2	0	23
Qualified	2	0	2	0	0	4
Disclaimers	8	25	28	28	25	114
Total	**29**	**27**	**30**	**30**	**25**	**141**

47. The disclaimer audit opinions result from the absence of adequate financial management and accounting practices, which expose the municipalities to serious risks of mismanagement and fraud. In the opinion of OIOS, the UNMIK Department of Civil Administration failed in its supervisory role. There were also many weaknesses and non-compliance with the Law on Public Finance Management and the Law on Public Procurement reported in the individual audit reports that indicated a clear lack of controls and the absence of an internal control system at municipalities. These findings included:

(a) Municipal accounts not being reconciled with the national accounting system;

(b) Insufficient controls over cash;

(c) Assets and liabilities not presented accurately and completely;

(d) Inadequate maintenance of personnel files;

(e) Failure of staff to obtain continuous training and professional development, particularly those staff involved in procurement and financial operations.

Transfer of operational management responsibilities and monitoring thereof

48. As stipulated in UNMIK Regulation No. 2001/9, the Mission's main responsibility with regard to municipalities is "to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles". In that regard, the retained powers and responsibilities of the Special Representative of the Secretary-General include the right to directly

intervene in the activities of each municipality, to exercise sanctions in the event of violations, and to continue to provide technical assistance and support.

49. OIOS surveyed UNMIK Municipal Representatives to determine whether they thought that the transfer of responsibilities was properly planned and implemented, and also to ask them to provide their views on the lessons learned.

50. Several weaknesses in the transfer of responsibilities were noted by the Municipal Representatives in the areas of political considerations and assessments; capacity and human resources; guidance provided by UNMIK; and oversight systems and procedures.

51. Considering the findings in external audit reports issued subsequent to the transfer of responsibilities and weaknesses identified during the OIOS audit concerning municipal operations, OIOS concluded that the transfer was not properly planned and/or implemented. Subsequent to the transfer, the Mission's responsibility remains to ensure that the system of local municipal administration functions effectively.

C. Performance of Provisional Institutions of Self-Government local governments

52. UNMIK Regulation No. 2000/45 gave municipalities a wide range of powers and responsibilities. Between 2001 and 2005, the total expenditures recorded by all municipalities totalled some 500 million euros (€). Furthermore, there were a number of subsequent regulations that, together with Regulation No. 2000/45, provided the legal infrastructure for the competencies reviewed during the OIOS audit.

53. A number of competencies for which municipalities are clearly responsible were not satisfactorily delivered, according to the assessment of the Municipal Representatives surveyed by OIOS and responses to the municipal standards questionnaires that are administered quarterly by OSCE. These competencies included: (a) urban and rural planning and land use; (b) local environmental protection; and (c) implementation of building regulations and building control standards.

54. A survey carried out by the United Nations Development Programme (UNDP) in 2006 revealed that 42 per cent of residents in Kosovo believed that conditions in their municipalities were improving, while about the same percentage of respondents believed the opposite. Compared to the 2003 survey, Kosovo residents had become more pessimistic about the overall direction of things in their municipalities.[4] More specifically, 27 per cent of all Kosovo residents still did not have piped water, 38 per cent had no access to a public sewage/sanitation system, and seven years after the end of the conflict, there were still electricity cuts. By 2006, less than 7 per cent of Kosovo residents had access to central heating.

55. In addition, more than 50 per cent of the respondents to the OIOS survey cited the lack of local environmental protection as a problem. Waste management, including public littering, remains a major issue.

[4] UNDP survey "Kosovo Mosaic 2006".

56. The municipal standards questionnaires and the OIOS survey results also disclosed serious concerns about non-compliance with the local laws and UNMIK regulations regarding urban and rural planning, land use, construction and property taxes. OIOS is of the opinion that the absence of effective arrangements for UNMIK monitoring and intervention to ensure that the municipal administration functions effectively was a major contributing cause for the lack of satisfactory delivery of municipal services.

D. Human rights and returns of refugees and displaced persons

57. The report of 13 March 2006 submitted by UNMIK to the United Nations Human Rights Committee concerning the human rights situation in Kosovo since June 1999 (CCPR/C/UNK/1) described the general framework within which human rights were promoted in Kosovo. That framework included the establishment of the Ombudsperson Institution in Kosovo under UNMIK Regulation No. 2000/38 of 30 June 2000 and the development by OSCE of a long-term human rights capacity in Kosovo.

58. However, based on the following reports which highlighted serious concerns regarding the human rights situation in Kosovo, it would appear that the current framework of human rights promotion has not been effective:

(a) In its Briefing on Kosovo and UNMIK to the Human Rights Committee at its eighty-seventh session in July 2006,[5] Amnesty International highlighted its grave concerns about certain violations of human rights in Kosovo since 1999. In particular, Amnesty International also drew the Committee's attention to the continuing impunity enjoyed by those responsible for grave human rights violations, including war crimes and crimes against humanity. According to the report, Amnesty International considered that UNMIK had failed in many respects to abide by or uphold international human rights law, including the International Covenant on Civil and Political Rights, incorporated into applicable law in Kosovo under UNMIK Regulations No. 1999/1 and No. 1999/24;

(b) The 2006 report of Minority Rights Group International[6] stated, "This report tracks a clear failure on the part of the international protectorate to learn lessons from the past and draw on the minority rights expertise available to it in the UN and other bodies. This failure has allowed decision-makers to remain unaccountable, and produced a Constitutional Framework that refers to minority rights so broadly that they are too wide to be effective..." The report also states, "The situation of minorities today in Kosovo is the worst in Europe";

(c) The October 2007 report of OSCE on a legal analysis of trafficking in persons cases in Kosovo concluded that, "the problem of trafficking in human beings ("trafficking") continues to be a major human rights concern in Kosovo", and "the OSCE remains deeply concerned by the continuing failure of the Kosovo judicial system to adequately respond to the worrying phenomenon of trafficking in human beings".

---

[5] Amnesty International, Kosovo (Serbia and Montenegro) United Nations Interim Administration Mission in Kosovo, Briefing to the Human Rights Committee, 87th Session, July 2006.

[6] Clive Baldwin, "*Minority Rights in Kosovo under International Rule*", Minority Rights Group International (July 2006).

59. In paragraph 11 (k) of Security Council resolution 1244 (1999), the Council states that the main responsibilities of the international civil presence will include "assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo". Along with UNMIK, international counterparts involved in facilitating and administering returns are the United Nations High Commissioner for Refugees (UNHCR), UNDP, the Kosovo Force (KFOR), and the OSCE Mission in Kosovo.

60. In order to address the issue of returns, the Strategic Framework on Communities and Returns was launched by the Special Representative of the Secretary-General and the Prime Minister of Kosovo on 19 July 2005.[7] Although conditions for returns have gradually improved, the factors that discourage large-scale return of refugees and displaced persons continue to exist, such as the lack of employment opportunities, unresolved property disputes and continuing perceptions of insecurity. In addition, according to the UNMIK Ministry Representative, the structure and management of the Ministry of Communities and Returns further hampered the returns. The number of returns totalled 16,129 for the period 2000 to 2006, out of a total of 228,365 identified by UNHCR.

61. *The UNMIK Administration commented that the OIOS findings did not adequately take into account the different phases which UNMIK has gone through, and that the Mission's responsibilities changed during the years of its interim administration in response to the changing circumstances in Kosovo and owing to the transfer of responsibilities to the Provisional Institutions of Self-Government. Moreover, according to UNMIK, the recommendations do not take into consideration the current political reality and the current phase of the Mission, and should be considered as a basis for lessons learned since they cannot be effectively implemented at this stage.*

62. OIOS would like to clarify that the audit duly considered the different phases UNMIK came through. OIOS also points out that the transfer of responsibilities to the Provisional Institutions does not mean that the accountability of UNMIK ended. Local administration was established by UNMIK Regulation No. 2000/45 on Self-Government of Municipalities with UNMIK acting as the "Central Authority" under the responsibility of the Special Representative of the Secretary-General. The institutional basis of local administration/government was provided by the Constitutional Framework for Self-Government in Kosovo, as stipulated by Regulation No. 2001/9, and the Special Representative's reserved powers and responsibilities are stipulated in article 8.1 (w) as the "responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles". Therefore, UNMIK has the responsibility to address the issues identified during the OIOS audit and to implement the recommendations to ensure the effective functioning of local municipal administrations.

[7] UNMIK and Provisional Institutions on Self-Government, Ministry for Community and Return, "Strategic Framework on Communities and Returns", Pristina (2005).

IV. Implementation of the mandates on economic reconstruction and development (Pillar IV)

63. The audit of UNMIK Pillar IV focused on key areas of risk which emerged from the OIOS risk assessment. Those areas included the governance, risk management and internal control systems at the Kosovo Trust Agency and the publicly owned and socially owned enterprises it is responsible for overseeing; the governance and oversight controls in the economic regulators, namely, the UNMIK Customs Service and the Central Banking Authority of Kosovo; and the administrative functions of UNMIK Pillar IV.

A. Kosovo Trust Agency

64. The Kosovo Trust Agency (KTA or the Agency) is an independent body pursuant to the Constitutional Framework[8] and is a reserved power to the Special Representative of the Secretary-General. The Agency was established by UNMIK Regulation No. 2002/12 of 13 June 2002 (the KTA Regulation). The Regulation was amended by UNMIK Regulation No. 2005/18 of 22 April 2005, which expanded the scope of the original Regulation in order to facilitate the privatization of socially owned enterprises and address issues concerning the KTA mandate over the publicly owned enterprises.

65. The Board of Directors of KTA (KTA Board) is the highest decision-making body in the Agency, and is under the direction of the Special Representative. The KTA Regulation states that all powers of the Agency shall be vested in the Board, and entrusts to the Board the general responsibility for the activities of the Agency. The Agency has significant responsibilities in developing Kosovo's economy as prescribed in the KTA Regulation.

66. Significant deficiencies were identified in governance and internal control and OIOS concluded that UNMIK and the KTA Board had operated the Agency in a way that has not shown due regard for adherence to the KTA Regulation, corporate governance principles, financial fiduciary responsibilities, and public accountability requirements. This has resulted in a weak corporate governance framework that represents a significant risk to the effective performance and financial sustainability of the Agency and the enterprises under its supervision.

Non-compliance with the Kosovo Trust Agency Regulation and weak financial management

67. The KTA Board has not complied with key sections of the KTA Regulation that support public accountability, oversight, and financial fiduciary stewardship of the Agency's resources, and UNMIK failed to take corrective actions in a timely manner. OIOS found that the Board did not approve the annual business plan and budget of the Agency, nor did it evaluate the performance of the Agency's Management based on the annual audit report. The Board did not submit quarterly reports to the Special Representative summarizing the activities of the Agency and reflecting the financial results; nor did it publish annual reports of the Agency.

[8] Section 11.2 of UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo.

68. OIOS is deeply concerned with the decision taken by the KTA Board, and supported by the Special Representative, on the composition of the Board of Directors of the Kosovo Energy Corporation J.S.C. (KEK), which included two politically active members. The by-laws of the incorporated publicly owned enterprises specifically prevent those individuals with active political involvement from participation on the enterprises' Boards. In the view of OIOS, the Special Representative and the KTA Board had a fiduciary duty to avoid and to disclose any actual and potential conflicts of interest.

69. Independent external audits were not conducted on the Agency's financial accounts for the fiscal years 2002 to 2005. The Agency's operating funds represent about 10 per cent of the Kosovo Consolidated Budget expenditure appropriations, and totalled €71 million in 2007. In addition, the Agency has not conducted the statutory external audits on its trust accounts for the fiscal years 2002 to 2006. The Agency's trust accounts total over €331 million, and are managed through 1,021 bank accounts that require monthly recording and reconciliation. Overall, mechanisms which provide independent assurance that the Agency's accounts were fairly stated and properly managed were not functioning. There is an urgent requirement for UNMIK to conduct the outstanding statutory audits.

70. The Agency's financial accounting and information system is inadequate. The spreadsheet-based financial management system is inappropriate for the size and complexity of KTA operations, and unacceptable for an organization that has been operating for five years. The financial management system is widely exposed to error, potential fraud and mismanagement owing to weaknesses in fundamental accounting controls. The system does not provide KTA Management and Board with adequate financial information to monitor and analyse the performance of the Agency. Urgent attention is required from UNMIK in this area.

B. Administration of publicly owned enterprises and socially owned enterprises

71. The Kosovo Trust Agency administers 26 publicly owned enterprises, which employ about 14,000 people. The publicly owned enterprises include: Kosovo Energy Corporation J.S.C. (KEK); Pristina International Airport Holding J.S.C. (PIA); Post and Telecommunication of Kosovo Holding J.S.C. (PTK); Kosovo Railways Holding J.S.C.; Kosovo Landfill Management Company J.S.C.; Kosovo Transmission, System Market Operator J.S.C.; district heating enterprises; and regional irrigation, waste and water enterprises.

72. The Agency took over the administration of the publicly owned enterprises in 2002. Five years later, the enterprises still do not have basic financial controls in place, nor do they prepare financial statements in accordance with International Financial Reporting Standards. Systemic deficiencies in the financial management systems have exposed publicly owned enterprises to a high risk of error, fraud and corruption.

73. From 2002 to 2005, all of the major publicly owned enterprises (PTK, KEK, PIA, Kosovo Railways and the district heating enterprises in Gjakova and Pristina) received either qualified opinions or disclaimer opinions on their financial statements. A disclaimer opinion is of particular concern as, according to the Office of the Auditor General, it "indicates that there are serious weaknesses in the system

of internal controls operated by the entity which are so significant as to prevent them (auditors) from forming any audit opinion about the financial statements".[9]

74. In 2006, the Office of the Auditor General together with the accounting firm of KPMG performed comprehensive evaluations on the financial management and internal control systems in KEK, PIA, Kosovo Railways, District Heating Termokos, and the waste, water and irrigation enterprises. Systemic weaknesses were identified and comprehensive recommendations were made to strengthen systems and controls. Observations from the Office of the Auditor General-KPMG evaluations included:

(a) Lack of formalized financial policies and procedures to ensure preparation of financial statements in accordance with International Financial Reporting Standards;

(b) Lack of formal controls over accounting entries;

(c) No formal process for the preparation of financial statements;

(d) Lack of an appropriate accounting and financial reporting system owing to the use of a spreadsheet-based system;

(e) Lack of a proper budgeting and forecasting process;

(f) Absence of procedures for the valuation of technical parameters of assets;

(g) Lack of proper reconciliation procedures regarding property, plant and equipment, including physical counts and recording assets;

(h) No internal monitoring process of the tenders;

(i) Lack of proper monitoring of the information entered into the billing system;

(j) Absence of legally binding contracts (especially at KEK, where 40 per cent of the customers were without a contract);

(k) No formal process over the estimation of allowances for bad debts;

(l) No formal procedures in place for the reconciliation of balances with suppliers and lenders;

(m) Lack of defined duties and responsibilities of the board of directors;

(n) Lack of an overall assessment of performance of the Company and corrective actions taken;

(o) Lack of formal evaluation of fraud risks, proper antifraud control procedures and an adequate code of conduct;

(p) Lack of formalized monitoring and control procedures;

(q) Lack of monitoring and evaluation of training results;

(r) Insufficient efforts to address the risks at the strategic level;

[9] Report of the Office of the Auditor General on the Financial Statements of the Kosovo consolidated Budget For the Year Ended 31 December 2005.

(s) Lack of adequate and competent staff in the internal audit activity, properly designed audit methodology, and an internal audit charter;

(t) Lack of qualified information technology personnel, information technology security policies, and a business continuity plan; inadequate physical security and backup media stored on-site.

75. The KTA Board has not developed adequate oversight mechanisms for the publicly owned enterprises, such as accountability reporting. KTA Management did not report to the KTA Board on the progress made by the publicly owned enterprises in implementing the 2006 Office of the Auditor General-KPMG evaluation recommendations. The KTA Board's general oversight responsibilities include ensuring sound financial management of the enterprises.

76. In the opinion of OIOS, the KTA Board should require regular reporting from the publicly owned enterprises on the implementation of audit recommendations, monitor the progress of implementation and provide regular progress reports to the Special Representative of the Secretary-General.

77. The Office of the Auditor General commissioned an external review of the Agency's privatization process of socially owned enterprises.[10] The review was conducted by an external auditor in June and July 2006. The major objectives of the audit were to provide reasonable assurance that: (a) the Agency's privatization process complied with relevant regulations and provisions; (b) the internal control system was properly designed and working sufficiently to ensure transparency and correctness of the process; and (c) the disposal of assets followed value for money principles. The overall findings of the review were as follows:

(a) The Agency had achieved a large number of privatizations of socially owned enterprises in a short period of time, and it has complied with the procedures and organization set out in the Regulations and its own Operational Policies with the exception of required regular reporting;

(b) The design and operation of the internal control system over the privatization process has fallen short of the spirit of the Regulations and best practices;

(c) The process does not ensure that assets are sold for the best possible value and best benefit to Kosovo;

(d) The Agency's Internal Audit Unit does not have as significant a role as would be expected in evaluating the privatization process.

78. Furthermore, the review identified non-compliance with reporting requirements and good practice. The audit report stated that the "KTA does not operate with full and open disclosure of material facts to the public". It also found that there was a lack of transparency in the privatization process, leading to an opinion that the Agency does not comply with section 10.2 of the KTA Regulation. Section 10.2 requires the KTA Board to include in their operational policies "transparent and uniformly applied procedures for the purposes of ensuring fair competition of bidders and obtaining a fair market value for shares in Corporations".

[10] Office of the Auditor General, External Review of the Privatization Process Undertaken by the Kosovo Trust Agency, December 2006.

C. Economic regulatory bodies

79. OIOS noted that there were concerns about the independence of the regulatory bodies in terms of the appointment of board members and inadequate separation between the executive function of the regulator and the regulator's board. There is a possibility of undue influence over the regulatory bodies if their budgets are set by the ministries rather than by the Assembly of Kosovo.

80. Recruitment and retention problems have also been noted at certain regulatory bodies caused primarily by the large pay differential between employees of the regulators and the prevailing market rates paid in the sectors being regulated.

81. None of the regulatory bodies had an internal audit unit or an audit committee, which breaches the related Law on Internal Audit. The internal oversight framework needed improvement in the UNMIK Customs Service and the Central Banking Authority of Kosovo.

82. *The UNMIK Administration commented that although there is merit to a number of points raised by OIOS, the main emphasis is on deficiencies and weaknesses in the internal control framework. In the view of UNMIK, the report does not acknowledge the major achievements, including the fact that the UNMIK Customs Service was created from scratch and has generated more than €3 billion of revenue for the benefit of the consolidated Kosovo budget since 1999, or the successes of the Fiscal Affairs Office and Economic Policy Office in establishing a functioning fiscal framework in cooperation with the relevant international institutions. The report also does not acknowledge the enormous progress made by KTA since 2005 in the privatization of socially owned enterprises and in implementing corporate structures within the publicly owned enterprises.* Notwithstanding the achievements indicated by the UNMIK Administration, the audit focused on the areas presenting the highest risks to the Organization and the achievement of mandates by UNMIK. As indicated in paragraph 5 above, OIOS communicated its risk-based audit approach to the UNMIK Administration at the commencement of the audit. OIOS notes that the UNMIK Administration acknowledged the merit of a number of issues raised by the audit.

V. Recommendation

83. In addition to the 69 recommendations made in the three audit reports referred to in paragraph 6 above, OIOS makes one additional recommendation to the Secretary-General, as follows:

84. The Secretary-General should bring the audit results and recommendations contained in the present report to the attention of the Security Council, the organ that established UNMIK by its resolution 1244 (1999) of 10 June 1999, for its information (AP2007/650/15/27).

85. *The Executive Office of the Secretary-General responded to the recommendation, stating that it was not the responsibility of the Secretary-General to refer such a report to the Security Council. That does not however, preclude the Secretary-General from referring to the OIOS report in his own report on UNMIK to the Security Council, to be submitted around June 2008.* OIOS wishes to clarify that it did not request the Secretary-General to refer the report to the Security Council,

but rather to bring the audit results and recommendations to the attention of the Security Council. In the opinion of OIOS, it is appropriate that the significant issues pertaining to the implementation of the UNMIK mandate be brought to the attention of the Security Council for its information.

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General
Office of Internal Oversight Services

Annex

List of the most critically important of the recommendations issued by the Office of Internal Oversight Services to the United Nations Interim Administration Mission in Kosovo Administration

Rec. No.	*Recommendation*
Comprehensive Interim Audit of UNMIK mandate implementation — Police and Justice (Assignment No. AP2007/650/13)	
02	UNMIK, in cooperation with Kosovo Police Service, should develop an action plan to step up the recruitment and participation of women.
03	UNMIK should develop a comprehensive and effective witness protection system based on a sound legal framework and including necessary training for the relevant police officials, prosecutors and judges.
07	Consistent with the public commitments made, UNMIK should expedite the investigation of all the pending cases, which relate to the March 2004 riots and prosecution of those found to be responsible, by establishing clear timeframes and goals, and properly monitoring the progress against those goals.
09	UNMIK should ensure and expedite the enactment of legislation on notaries and court-appointed mediation, and the implementation of the case management information system.
10	UNMIK should ensure that the Kosovo Judicial Council takes prompt and effective remedial steps aimed at reducing the backlog of pending cases, which should include maintaining a more effective database on case load and ageing, and implementing and monitoring the time standards.
15	UNMIK should issue Administrative Directions, pursuant to article 200 of the Law on Execution of Penal Sanctions, in order to fully implement the Law.
16	UNMIK should ensure that action is initiated by the Ministry of Justice to assess the adequacy of the capacity of the correctional infrastructure in Kosovo and to conform to the standards and requirements of the legislation on the execution of penal sanctions.
Comprehensive Interim Audit of UNMIK mandate implementation — Civil Administration (Assignment No. AP2007/650/14)	
01	UNMIK should establish an effective and systematic mechanism for monitoring and evaluation of the extent to which the competencies it transfers to the Provisional Institutions of Self-Government ministries are being properly assumed.
02	UNMIK should take necessary steps, including capacity-building and intervention by the Special Representative of the Secretary-General, to ensure that the Provisional Institutions of Self-Government ministries assume the transferred competencies appropriately.

Rec. No.	Recommendation
04	UNMIK, in cooperation with the Provisional Institutions of Self-Government ministries, should implement effective accountability mechanisms, by establishing and monitoring a comprehensive action plan for strengthening the authority and capacity of key elements of accountability including the Office of the Auditor General, internal audit function within the Provisional Institutions of Self-Government ministries, the Kosovo Anti-Corruption Agency and Ombudsperson Institution in Kosovo.
06	UNMIK should take immediate steps to strengthen the financial management and accounting systems of municipalities, which should provide a basis for external auditors to conduct audits and to form an opinion on the financial statements.
08	UNMIK should take necessary steps, including capacity-building, clarification of the interaction between UNMIK Regulation No. 2000/45 and other legislation concerning municipal representatives' responsibilities, and firmer intervention by the Special Representative of the Secretary-General, where necessary, to ensure that the Provisional Institutions of Self-Government municipalities assume the transferred competencies appropriately.
12	UNMIK should develop a framework to assist municipalities in strengthening their capacity to support long-term sustainable economic development at the local level.
13	UNMIK should ensure that the Ministry of Environment and Spatial Planning implements a legislative compliance framework at the municipal level, including control mechanisms for monitoring adherence to environmental regulations and enforcing penalties for failure to comply.
21	UNMIK should instruct the Organization for Security and Cooperation in Europe, as the lead agency in human rights matters, to evaluate the effectiveness of the current framework for human right promotion and develop a comprehensive action plan to address the human rights concerns in Kosovo.
Comprehensive Interim Audit of UNMIK mandate implementation — Economic Reconstruction and Development (Assignment No. AP2007/650/15)	
01	UNMIK should require the Board of Directors of the Kosovo Trust Agency to provide a formal accounting on its non-compliance with the KTA Regulation, which should include its action plan for taking corrective actions.
02	UNMIK should strengthen the oversight mechanisms in place for the Kosovo Trust Agency and its Board of Directors by implementing a reform programme based on a comprehensive external evaluation of the KTA governance mechanism.
07	UNMIK should give urgent priority to commissioning an independent external audit of: (i) the Kosovo Trust Agency — Kosovo Consolidated Budget financial accounts for the fiscal years 2002 to 2005; and (ii) the Agency's trust fund accounts for the fiscal years 2002 to 2006.
08	UNMIK Pillar IV should ensure that the Kosovo Trust Agency implements an adequate automated financial accounting information system as a matter of priority.

Rec. No.	*Recommendation*
11	UNMIK should strengthen the quality of financial management systems and controls in the publicly owned enterprises as a matter of priority by requesting the Board of Directors of the Kosovo Trust Agency to implement a strategic action plan towards that end which should include arrangements for regular progress reporting to the KTA Board on the implementation of the action plan.
15	UNMIK Management should require the Kosovo Trust Agency to conduct annual evaluations of the boards of directors of the publicly owned enterprises (including audit committees thereof); and conduct quality assurance assessments of their internal audit functions.
20	UNMIK Management should ensure that adequate separation exists between the executive function of the regulatory bodies and their governing boards; the former discharging the executive functions and the latter being responsible for strategic decisions and policy.